1951

File No. O. Security Measures/51

Legal Deptt

A BRANCH

K

Subject: Opinions under the Bombay Public security Measures Act 1947.

P.16 B

O. Security Measures/51

File No

Gen. 194

3044

C O N T E N T S.

Legal Department File No. G. Security Measures/51.

Sr. No.	R.L./G.No.	Subject.	Pages.
		Bombay Public Security Measures Act, 1947.	
1.	[illegible]	Whether it would be possible to levy collective fines under the new Constitution.	1-4.
2.	[illegible]	Whether a person acting in a manner prejudicial to the public safety or the tranquillity of the state can be held as acting in a manner prejudicial to the security of the State.	5-8.
3.	[illegible]	Whether burning of forest wood would amount acts of which section 6 relates.	9-10.
4.	[illegible]	Whether it is necessary to bring to the notice of the Bombay High Court section 21 A which was not considered by it in two cases and which operates retrospectively.	11-12.
5.	4888 12-5-51	[illegible] Whether the view taken by Secretary H.D., that the Police can arrest under Section 23 but the complaint in the Court will have to be made by the State Government is correct.	13-18.
6.	[illegible]	Section 7(1) - Breach of order prohibiting drills etc. of a military nature ---- whether omission to specify the exercises drills, etc. of a military nature in the order would render it illegal, whether an appeal against acquittal would be filed.	(PP. 15-16 not typed) 19-26.
7.	[illegible]	Whether Shri Oak can be tried again on these very same facts for an offence under sub-section 3 (6) of section 71 in that he had committed a breach of an order under sub-section (2).	27-28.

SVV
15.6.54.
5 c.

2016

K.S.R.
2/6.

Legal Department wkkk

Submitted with reference to the note of the Secretary H.D. at page 1 ante.

The Secretary H.D. at page 1 ante seeks the advice of the H.L.A. on the point, namely, whether it would be possible to levy collective fines e.g., under the Bombay Public Security Measures Act, 1947 under the new Constitution. He states that the H.C.M. of Bengal during the conference at Delhi mentioned that his law officers had advised him that it was not possible to levy collective fines under the new Constitution.

(See U.R. to H.D. No. 3856).

dated the 14th February 1951

SVV
15.2.50.
& c.

Legal Department.

The provision of section 6 of the Bombay Public Security Measures Act, 1947, are similar to those contained in clauses 51 and 52 of the Bombay Police Bill (as amended by the Select Committee) though the grounds for levying collective fine in the former Act and riot tax or punitive police tax in the latter Bill may be different. The provisions of the Police Bill have recently been examined in view of the provisions of the Constitution of India and are considered to be not affected by anything contained in Part III of the Constitution of India. Even the Government of India to whom the Police Bill was shown did not take any exception to the provisions in regard to the levying and collection of riot tax and punitive police tax. Article 31 has no application to a taxing enactment whether passed before or after the commencement of the Constitution. Articles 20 and 21 are not relevant to the question under consideration.

2. In any case nothing need be done at present. If any question arises whether the provisions of section 6 of the Bombay Public Security Measures Act are void it may be left to the Court for decision.

Sd/- J.R.D. 13/2

Additional Secretary to Government.

U.R. to H.D., No. 2836; dated the 14th February, 1951.

SVV
15.6.56.
4 s.

Office of the R.L.A.

Section 19 of the Bombay Public Security Measures (Amendment) Act, 1950 provides that the provisions of that Act which amendment by modification or adaptation the provisions of the Bombay Public Security Measures Act, 1947, shall not render invalid any order duly made and in force immediately before the commencement of the Act and shall continue to be in force in so far as it is not inconsistent with the provisions of the original Act of 1947 as amended by the Amendment Act of 1950. Sub-section (1) of section 2 of the Bombay Public Security Measures Act, 1947, as it originally stood, authorised the State Government to extern any person acting in a manner prejudicial to the public safety, the maintenance of public order or the tranquillity of the State or any part thereof. That sub-section as adapted by the Amendment Act of 1950 empowers the State Government to extern a person with a view to preventing him from acting in a manner prejudicial to the security of the State, maintenance of public order or the maintenance of supplies or services essential to the community in the State or any part thereof. Although there is a difference of wording between the original section and that section as adapted by the Amendment Act of 1950, it would depend on the terms of an order whether it can continue to be in operation. If the terms of the order are consistent with the adaptations made, it can continue in operation. A person acting in a manner prejudicial to the public safety or the tranquillity of the State or any part thereof may be held as acting in a manner prejudicial to the security of the State.

2. It may be pointed out that the Supreme Court in the case of Ramesh Thapar v. the State of Madras known as the Cross Roads case, has put a very wide meaning on the expression "public safety". In that case the

Supreme Court has observed that although in the context of a statute relating to the law or order & "securing public safety" may not include the securing of public health, it may well mean securing the public against rash driving on a public way and the like and not necessarily the security of the State. In that case, however, the point involved was of a different nature and the judgment in that case will not affect any order of externment issued under sub-section (1) of section 2 of the Bombay Public Security Measures Act, 1947. It may be noticed that if in the orders in question no reference is made to the existence of public order but to public safety coupled with tranquility", the expression "public safety and tranquility" occuring in the said orders may well signify that a person acting in a manner prejudicial to the public safety and tranquillity is a person acting in a manner prejudicial to the security of the State. In such cases the orders of externment would not, therefore, be considered by the Courts as being inconsistent with the provisions of the Bombay Public Security Measures Act, 1947, as adapted by the Amendment Act of 1950.

Sd./- J.R.D.
20/2
Remembrancer of Legal Affairs.

U.R. to H.D., No. 195-Confl., dated the 21st February, 1951.

S/V
16.6.56.
4 c.

Office of the R.L.A.

The burning of forest wood in this case would not amount to acts to which section 6 of the Bombay Public Security Measures Act, 1947, relates. The view taken by the Home Department is correct.

Sd./- J.R.D.
16/7
Remembrancer of Legal Affairs.

U.R. to H.D., No. 606-Comfl., dated the 18th July 1951.

SVV
18.6.56.
4 c.

Legal Department.

It appears that section 21A of the Public Security Measures Act, 1947, was not brought to the notice of the Bombay High Court and was not considered by it in the two cases under consideration. That section operates retrospectively vide R.L.A.'s opinion No. 339 Confl. dated the 22nd May 1950. Therefore the Commissioner of Police need not have been examined in the Lower Court in these two cases which were heard after Section 21A came into force. An appeal is therefore worth while, provided it is not barred by limitation.

Sd/-
Additional Secretary to Government.

H.R. to H.D., No. 17184; dated the 29th October 51.

SVV
15.6.56.
4 c.

R.I.No. 4862
dt. 12.3.1951.

Submitted.

The Chief Police Prosecutor, Bombay states that in view of the language of section 8A of the Bombay Public Security Measures Act, 1947 the Police cannot arrest the accused person by virtue of section 22 for committing offences under section 8 and then make a complaint under section 8A and that such offences would therefore be non-cognizable. Secretary H.D. state that the Police can arrest under section 22 but the complaint in the Court will have to be by the State Government. The R.I.A. is requested to advise.

Sd./- P.S. Nadkarni.
18/4

Sd./-
21/4

SVV
15.6.56.
4 c.

Legal Department.

The view taken by the Secretary, Home Department, at pages 21-22 is correct.

Sd./-
Additional Secretary to Government.

U.R. to H.D., No. 6579; dated the 28th April, 1951.

SVV
15.6.56.
4 c.

Legal Department.

Breach of order prohibiting drills etc. of a military nature.
Bombay Public Security Measures Act, 1947 - section 7(1).

By Government Notification, Home Department (Political) No. S.R. III/356/TS 138(f), dated 14-7-49, issued in exercise of the powers conferred by section 7(1) of the Bombay Public Security Measures Act, 1947, Government prohibited the performance in the Province of Bombay of all exercises, movements, evolutions or drills of a military nature by the organisation known as Rashtriya Swayam Sevak Sangh whether continuing under the same or altered name or by any branch thereof and also by any bodies of persons known by the name of volunteers operating or working under the general direction or management of the organisation or of any of its branches. A prosecution was launched by the Thane Police against Shri W.P.Oak for a contravention of this order but the accused has been acquitted by the City Magistrate who, among other things, has observed :

" As regards the law, Shri Marathe, who is the District Superintendent of Karwar and is examined as an expert by the prosecution to prove that the exercise and drills performed by the R.S.S. of the accused were of the military nature, admits that a layman cannot know what is of military nature. What is of military nature is nowhere defined by Government. This section 7(1) does not authorise Government to issue prosecution against a particular organisation only ~~xx~~ Ex 1-A. This section authorises Government only to specify the drills which they want to prohibit.

It goes beyond the limits given by law in prohibiting only the R.S.S. and does not do what was required viz. to specify the area or at least specify which drills of military nature Government wants to prohibit. Therefore, the notification of Government Ex. 1 on which the prosecution is launched against the accused is not according to law and is also vague and indefinite."

SVV

The notification in question is superseded by another notification of 24-3-1950 but that also does not specify the drills etc. which are considered to be of a military nature. The R.L.A. is, therefore, requested to advise whether omission to specify the exercises, drills etc. of a military nature in the latter order would render it illegal and also whether an appeal against acquittal should be filed in this case.

2. Section 7(1) of the Bombay Public Security Measures Act, 1947, enacts :

" If the State Government, is satisfied that it is necessary in the interest of public order to do so, by general or special order, prohibit or restrict in any area any exercise, movement, evolution or drill of a military nature specified in the order."

The order which was subject of decisionin this case was issued after consultation with the Advocate General and it was considered by him that the term "any area " would include the whole province. (vide R.L.A.'s note dated 14-3-1948 at pages 11-12 of H.D. File No. 356-V). The drills etc. were not specified in the order since it was the intention to prohibit all exercises etc. of military natue and not only a few (vide paregraph 4 of R.L.A.'s opinion No. 181-Confl. dated the 6th March 1948 at page 19 of H.D. File No. 356-V). The Magistrate has, however, taken a contrary view on both the points and the question for consideration is whether the Magistrate's view is correct.

3. The Magistrate's view that section 7(1) requires that the area should be specified is not correct. The words "any area" which occur in the section are capable of including the whole Province. "Any" is a word which excludes limitation or qualification (per Fry. L.J. Duck vs. Bates, 53 L.J.C.P. 344, 12 Q.B. 79); "as wide as possible" (per Chitty J. Beckett vs. Sutton, 51 L.J. Ch. 433). So, ex power in a Lease, enabling the

lessor to resume "possession of any Portion of the premises demised" enables him to resume all (Liddy vs. Kennedy, L.R. 5 H.L. 134). So also, a notice of an Extraordinary meeting, under S. 70, Com. C.C. Act, 1948, "to remove any of the present Diectors," justifies a Resolution to remove them all (Isle of Wight Ry. V.Tahourdin, 25 Ch. D. 332 etc.) (Vide Stroud's Judicial Dictionary, p. 92 and also at p. 95). In the circumstances the Government Order which was issued in respect of the whole Province and not only for a portion of it is not ultra vires of the provisions of the section on the ground that it applies to the whole of the Province.

4. The second point for consideration is whether an order under section 7(1) of the Public Security Measures Act would be bad on the ground that it does not state specifically what kinds of exercises are prohibited. It would be noticed from paragraph 4 of R.L.A.'s opinion No. 121-Confl. dated the 6th March 1948 that the exercises etc. were not specified in the order as it was the intention to prohibit all exercises, movements, evolutions or drills of a military nature. As the exercises etc. have not been specified it would be for the Court to decide on the evidence led before it whether the particular type of exercise which is in question is or is not of a military nature against which the prohibition in the Government Order is directed. The order as at present worded leaves it to judicial decision to determine the nature of the exercise or drill, but that alone does not make the order ultra vires. However, from the point of view of the enforcement of the order, it would be desirable to specify clearly the type of exercises forbidden instead of leaving the matter to the decision of the Courts which are likely to take divergent views.

5. The next point for consideration is whether

SVV
15.6.56.
A.G.

is this particular case an appeal against the ex acquittal of Shri Oka is feasible. As the order issued under section 7(1) of the Act is directed against all exercises etc. of a military nature and does not particularise the prohibited exercises any further, it is, as pointed out above, left to the Court to determine whether the particular exercise, movement etc. in respect of which the alleged offender is prosecuted was of a military nature. Here the Court considered that question and held that there was no satisfactory evidence that the alleged offending exercises were of a military nature. That finding is on the evidence correct and an appeal is therefore not feasible.

Sd./-
Additional Secretary to Govt.

U.R. to H.D., No. 19387; dated 3rd December, 1951.

SVV
15.856.
4 0.

Office of the R.I.A.

Shri Oak held a function of the R.S.S. Organisation. That act of his was in breach of an order issued under sub-section (1) and another order issued under sub-section (2) of section 7 of the Bombay Public Security Measures Act, 1947. Either of these breaches is an offence punishable under sub-section (3) of that section. Shri Oak was prosecuted for an offence under sub-section (3) and has been acquitted. The charge at the trial was that he had committed a breach of an order made under sub-section (1). The Home Department now desires to know whether Shri Oak can be tried again on these very facts for an offence under sub-section (3) of section 7, in that he had committed a breach of an order under sub-section (2). The answer is that he cannot be. Section 403, Criminal Procedure Code, 1908, would be a bar to such a trial.

Sd./- J.R.D.
17/12
Remembrancer of Legal Affairs.

U.S. to H.D., No. 20110, dated the 17th December, 1951.

SVV
15.6.54.
4 C.